



INTERIOR BOARD OF INDIAN APPEALS

Estate of Bessie Hunter Snake

37 IBIA 58 (11/16/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF BESSIE HUNTER SNAKE : Order Docketing Appeal and
: Affirming Decision
:
: Docket No. IBIA 01-187
:
: November 16, 2001

On September 27, 2001, the Board of Indian Appeals received a notice of appeal from Debra Ann Davis (Appellant), who sought review of a July 26, 2001, Order Denying Petition for Rehearing issued in the Estate of Bessie Hunter Snake (Decedent) by Administrative Law Judge Richard L. Reeh. Judge Reeh's July 26, 2001, order let stand his August 24, 2000, Order Approving [Decedent's] Will.

Appellant's notice of appeal stated in its entirety:

I, [Appellant,] do hereby exercise my right to appeal the Last Will and Testament of [Decedent]. The grounds for my appeal are:

[Decedent] was:

1. Deaf
2. Blind
3. and she could not read or write.

Although these conditions don't preclude [Decedent] (a tribal elder) from making a Last Will and Testament, they are as such.

The documents submitted by Appellant with her notice of appeal showed that she had made the same argument in her petition for rehearing before Judge Reeh.

In his order denying rehearing, Judge Reeh stated:

The conditions complained of in [Appellant's] Petition do not, either individually or collectively, preclude an individual from making a will.

Moreover, the factual allegations contained in the Petition could have been presented at the time of the initial probate hearing.* * *

The will in this case was self-proving, and no one objected to it at the initial probate hearing. [Appellant] was one of at least eighteen individuals who participated at the hearing and did not object. In spite of the absence of objection, the Scrivener and Will Witness * * * gave testimony about the will's making. * * * Based upon the self-proving affidavit, the testimony received and the absence of objection, this will was properly approved.

Rehearings are intended to permit introduction of evidence which could not, with reasonable effort, have been discovered prior to the original hearing. The purpose of rehearing is not to allow presentation of evidence and arguments that were known at time of original hearing.

In an order dated October 1, 2001, the Board observed that Appellant's notice of appeal simply repeated the bare contention she made in her petition for rehearing as to why Decedent's will should not have been approved. The Board further observed that the notice of appeal offered no explanation for Appellant's failure to discover evidence prior to the probate hearing and her failure to present her argument prior to or at the hearing. The Board's order continued:

Appellant will be given an opportunity to show error in Judge Reeh's order denying rehearing. In order to make such a showing, Appellant must show that (1) credible evidence exists to support her contention that Decedent lacked testamentary capacity and (2) she had a valid reason for failing to discover and present that evidence prior to or at the original hearing.

In her response, Appellant states:

I, [Appellant,] do not allege error in Judge Reeh's decision. My purpose for Rehearing is reconsideration of his decision given my original statements concerning the Decedent. Further, my reason for failing to present these facts at the original hearing are: I didn't want to stand-up and blurt out these facts but rather was waiting for Judge Reeh to ask for any arguments against the will. Since this didn't happen, the will was approved.

The reason Appellant gives for failing to present her argument at the probate hearing is different than the reason she gave to Judge Reeh in her petition for rehearing. In her petition for rehearing, she stated: "This evidence was not presented at the prior hearing due to my uncertainty and shyness of the court." Accordingly, her contention that Judge Reeh failed to

offer parties an opportunity to present objections to the will is made for the first time in this appeal.

Ordinarily, the Board does not consider arguments made for the first time on appeal. E.g., Estate of Donna Gottschalk, 30 IBIA 82, 86 (1996), and cases cited therein. Even so, given the gravity of this allegation, the Board might consider the argument had Appellant shown some basis for her objection to the approval of Decedent's will.

However, it is apparent from Appellant's filings that she could not prevail here even if the Board were to continue these proceedings. Appellant has failed even to make a credible allegation that Decedent lacked testamentary capacity, let alone present any evidence to support such an allegation. Indeed, Appellant has conceded that the facts she alleges (that Decedent was deaf and blind and could not read or write) would not render Decedent incapable of executing a will. In none of her filings has Appellant made any remotely viable challenge to Decedent's will.

Under these circumstances, the Board finds that briefing is not necessary and that a decision may be issued at this time. See, e.g., Estate of Frances Alfred Graham, 34 IBIA 276 (2000), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, and Judge Reeh's July 26, 2001, order is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge